

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1857 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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SUMERBHAI VENIRAMJI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1857 of 2002
MS SUMAN PAHWA for Petitioner No. 1
MR SAMIR DAVE, AGP for Respondents No. 1 to 3
MS PJ DAVAWALA, Addl. Central Govt. Standing
Counsel for Respondent No. 4
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/04/2002

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution of India the petitioner has sought for quashing and setting aside the impugned detention order dated 23-12-2001 passed by the respondent

no. 2 District Magistrate, Valsad in exercise of his power conferred by Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, on various grounds.

2. When the matter came up for hearing, rule was issued and pursuant to the same Mr. Samir Dave, ld. A.G.P. has appeared on behalf of the respondent Nos. 1 to 3 and produced the affidavit-in-reply filed by the Dy. Secretary, Govt. of Gujarat, Food, Civil Supplies and Consumer Affairs Department, as well as the affidavit-in-reply filed by the District Magistrate, Valsad. Similarly, Mr. P.J. Davawala, Addl. Central Govt. Standing Counsel has appeared on behalf of the respondent no. 4 and produced the counter affidavit filed by the Under Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. All the aforesaid affidavits are ordered to be taken on record.

3. Ms. Suman Pahwa learned counsel for the petitioner, Mr. Samir Dave, ld. A.G.P. for the respondent Nos. 1 to 3 and Mr. P.J. Davawala, Addl. Central Govt. Standing Counsel for the respondent no.4.

4. Ms. Pahwa Learned counsel for the petitioner concentrated her argument only on the point of delay in considering and deciding the representation of the petitioner made on 3-1-2002 and she has drawn my attention towards page nos. 3 and 5 of the petition and argued that the impugned detention order has been passed by the respondent no. 2 against the petitioner on 23-12-2001 and the petitioner was actually detained on 24-12-2001. Thereafter, the petitioner has made representation through the advocate on 31-1-2002 by Registered Post A.D. to the respondent no. 4 Central Government and the same was forwarded by the Superintendent, Central Prison, Sabarmati to the respondent no. 4 and the same was rejected by the respondent no. 4 on 11-1-2001 8-1-2002 and decision thereof was conveyed to the concerned authority by telegram dated 11-1-2002. He further argued that thus there is delay in deciding the representation of the petitioner and hence the detention order is vitiated and bad in law and so the same requires to be quashed and set aside.

5. Learned AGP, Mr. Dave has drawn my attention towards the affidavit filed on behalf of the respondents no. 1, 2 and 4 and submitted that there is delay of about one week in deciding the representation dated

3-1-2002 of the petitioner and the decision was conveyed on 11-1-2002. According to him, there is no long delay in considering and deciding the representation of the petitioner.

6. I do not agree with the argument advanced by learned AGP, Mr. Dave. Since the representation dated 3-1-2002 of the petitioner is not decided promptly by the concerned authority i.e. till 11-1-2002, it is a delay and hence, the impugned order of detention is illegal and the same cannot be sustained in the eye of law. Learned counsel for the petitioner does not press any other grounds or points. Under these circumstances, the impugned detention order dated 23-12-2001 deserves to be quashed and set aside.

7. In view of the above discussion, the present petition is allowed. The impugned detention order dated 23-12-2001 passed by the respondent no. 2 - District Magistrate, Valsad against the present petitioner detenu is quashed and set aside. The petitioner - detenu Sumerbhai Veniramji Chauhan, is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute, with no order as to costs. Direct Service is permitted.

(R.P.Dholakia, J.)

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/JVSatwara/